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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Access Charge Reform	)	CC Docket No. 96-262
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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SUMMARY

The Ad Hoc Telecommunications Users Committee opposes the Commission's proposal to impose a Presubscribed Interexchange Carrier Charge ("PICC") on customers of special access service.

A special access PICC to recover the costs of switched access facilities would constitute an anti-competitive and economically inefficient implicit subsidy of switched service.

Moreover, the Commission's service migration justification for the special access PICC is inconsistent with the Commission's own projections regarding the dollar impact of its switched access rate restructuring. The new switched access charges will *discourage*, not *encourage*, migration to special access service by multi-line switched access customers. The Ad Hoc Committee has calculated the overall effect of the Commission's restructuring of switched access charges. The effect of the restructuring is to *increase*, rather than decrease, the level of switched traffic a customer must have before special access charges for equivalent capacity would be lower.

The Commission's migration rationale also erroneously assumes that switched and special access services are routinely interchangeable so that relative price is the sole determining factor for service selection. In reality, business users have numerous operational and technical reasons for using special access services that are not affected by the Commission's access rules.

Accordingly, the Commission's rationale for imposing a non-cost based PICC on special access customers is not supported by the facts or sound public policy. Ad Hoc urges the Commission to reject the proposal.

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COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

In response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned docket,[1] the Ad Hoc Telecommunications Users Committee ("Ad Hoc Committee") submits the following comments opposing the Commission's proposal to impose a Presubscribed Interexchange Carrier Charge ("PICC") on customers of special access service.

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[1] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Dkt. Nos. 96-262, 94-1, 91-213 and 96-263, FCC 97-158, *Further Notice of Proposed Rulemaking* (released May 16, 1997) ("Further Notice") at ¶ 397.

As set forth in greater detail below, a special access PICC to recover the costs of switched access facilities would constitute an anti-competitive and economically inefficient implicit subsidy of switched service. The Commission has previously and repeatedly rejected implicit subsidies as economically inefficient and inconsistent with the public policy underlying the Commission's access rules. Congress similarly rejected implicit subsidies in the Telcommunications Act of 1996. Moreover, given the technological and operational differences between special and switched access services, and the Commission's projected decreases in the per minute costs of switched access, significant migration of switched service customers to special access is not likely as a result of the Commission's higher, flat-rated charges for switched service. The Commission's highly-speculative migration scenario thus does not justify the imposition of a special access PICC.

INTRODUCTION

Ad Hoc's members are high-volume business users of telecommunications services and facilities who desire to promote the availability of high quality services and facilities at reasonable prices. To that end, the Ad Hoc Committee consistently has supported fundamental reform of the interstate access charge rules and a substantial downward adjustment in rate levels. Similarly, the Ad Hoc Committee recognizes the need for universal service subsidies -- so long as those subsidies are explicit, properly sized, allocated, collected and distributed in an economically efficient, pro-competitive manner.

Ad Hoc has a vital interest in the development of competitive markets for telecommunications services wherever possible, because competitive markets produce cost-based rates and spur the development of innovative products and services.

In the *Further Notice*, the Commission seeks comment on its tentative conclusion to allow price cap incumbent local exchange carriers ("ILECs") to assess a PICC on special access customers to recover revenues associated from the LEC provision of switched common line service.[2] The amount of the special access PICC would be capped at the amount of the PICC an ILEC could charge for a multi-line business line.[3]

The rationale behind the Commission's proposal is its' concern that the revised local access charges, including the higher multi-line business SLCs and the new multi-line business PICC, may cause business customers to migrate from the public switched network to special access. Migration would result in decreased projected revenues from multi-line SLCs, and as a result PICCs for all remaining switched access lines would need to be increased to make up for the loss of revenue.[4] Thus, according to the Commission, a PICC on special access customers is necessary to "recover revenues from the common line basket."[5]

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2 Further Notice at ¶ 403.

3 *Id.*

4 *Id.* at ¶ 401-402.

5 Id. at ¶ 403.

For reasons discussed in greater detail below, Ad Hoc opposes the FCC's proposal.

ARGUMENT

I. IMPLICIT SUBSIDIES ARE ANTI-COMPETITIVE, ECONOMICALLY INEFFICIENT, AND INCONSISTENT WITH THE ACT AND THE COMMISSION'S RULES

Under the Commission's proposal, incumbent price cap LECs would be permitted to "assess a PICC on special access lines to recover revenues for the common line basket."[6] Customers of special access service do not use common line facilities for special access services, however. Thus, in contrast to the Commission's efforts in the *First Report and Order* to eliminate price-distorting cross-subsidies in access rate structures, the Commission proposes in the *Further Notice* to create just such a subsidy from special access customers to customers of switched access services.[7]

Such an anti-competitive, economically inefficient result is contrary to the Congressional intent in passing the Telecommunications Act of 1996 and inconsistent with the long-standing public policies underlying the Commission's access charge reform policies.

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6 Further Notice at ¶ 403.

7 The Commission specifically noted that PICC is "not a universal support mechanism, but rather a flat-rate charge that recovers local loop costs in a cost-causative manner." Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Dkt. Nos. 96-262, 94-1, 91-213 and 96-263, FCC 97-158, *First Report and Order* (released May 16, 1997) ("First Report and Order") at ¶ 104. Thus, under the Commission's proposal for switched access PICCs, to the extent that "common line revenues are not recovered through SLCs," incumbent LECs would be permitted to recover those revenues through a PICC. *Id.* at ¶ 91.

A. Implicit Subsidies Distort Competition.

Under the Commission's proposal, the price of special access services would be artificially increased to recover costs not associated with provision of the service. The price of switched access services would therefore be understated by the recovery of switched access costs from special access customers. The resulting price distortions would adversely affect competition for both services.[8]

Competition and pricing for special access service would be distorted in two ways. First, by artificially increasing ILEC special access prices above the economic costs of the service, the Commission's special access PICC would create a pricing umbrella for emerging special access competitors. Rather than set their prices at their economic costs, new entrants would need only to price below the artificially high prices of the ILEC. Users would thereby be denied lower, cost-based rates and the ILECs would experience less downward pressure on their pricing. Second, overstated ILEC special access prices would stimulate uneconomic entry by inefficient competitors whose costs are greater than the ILECs' economic costs, absent a subsidy element, but less than ILEC prices overstated by the inclusion of a special access PICC.[9]

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8 As the Commission has stated, the First Report and Order "sets forth a plan for removing distortions and inefficiencies in both the current 'rate structures'...and 'rate levels'. By rationalizing the access charge rate structure, we ensure that charges more accurately reflect the manner in which costs are incurred, thereby facilitating the movement to a competitive market." First Report and Order at ¶ 13. The proposed special access PICC is inconsistent with this plan.

9 Perhaps the Commission is hoping that ILECs will use their pricing flexibility under price caps rules to keep Actual Price Index ("API") (i.e., prices charged to end users) down even when

Similarly, competition for switched services would be distorted by the Commission's proposal to allocate common line costs to a PICC paid by special access customers. By creating artificially low prices for switched services, the Commission's proposal would discourage competitive entry by more efficient, lower cost providers of switched service whose prices might exceed the ILECs' subsidized rates but undercut unsubsidized rates.

Rather than introduce artificial pricing distortions in the access marketplace, the Commission should continue to strip out all subsidies, implicit and explicit, and recover common line costs exclusively from common line customers.

B. Implicit Subsidies are Inconsistent with the Directives of the Act.

In passing the Telecommunications Act of 1996, Congress intended to revamp the system of implicit subsidies embedded in the access rules under the rubric of furthering universal service. Regarding the sections of the Act targeted to universal service support mechanisms, Congress stated that "[t]o the extent possible....any support mechanisms continued or created under new Section 254 should be explicit, rather than implicit as many support mechanisms are

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the applicable PCI is raised to reflect PICC. But this scenario erroneously assumes there is sufficient competition in special access markets to discipline ILEC rates and keep them at current levels. Given the lack of substantial competition in this market,, the Commission cannot reasonably expect that ILECs will reduce other special access rate elements to offset the impact of new PICC-based charges for special access service. Special access competition is not sufficient to insulate customers from the effects of the Commission's proposal and the non-cost-based rate increases that would result.

today."[10] Cognizant of this mandate, the Commission continually emphasized in its recent *First Report and Order* that it has "reshape[d] the existing rate structure in order to eliminate significant implicit subsidies in the access charge system."[11] To the extent that support mechanisms are necessary to meet universal service obligations, they must be explicit (and thus should be addressed in the Universal Service proceeding) and consistent with the pro-competition purposes of the Act.[12] Imposition of a special access PICC to keep prices low for switched service is neither.

II. THE COMMISSION'S SPECULATIVE AND UNWARRANTED MIGRATION CONCERNS DO NOT JUSTIFY IMPOSITION OF A SPECIAL ACCESS PICC

The Commission's rationale for arbitrarily increasing the price of special access service with a PICC is a speculative concern that some multi-line business customers of switched access will substitute special access lines to avoid payment of the Commission's new, higher flat-rated charges for switched lines.[13] By artificially raising the rate for special access services, the Commission

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[10] Joint Explanatory Statement of the Committee of the Conference, S. Conf. Rep. No. 230, 104th Cong. 2d Sess. 131 (1996).

[11] First Report and Order at ¶ 36. *See also Id.* at ¶ 35 ("we reform the current rate structure to bring it into line with cost-causation principles, phasing out significant implicit subsidies"), at ¶ 75 ("[o]ur initial implementation improves upon the current rate structure because it reduces subsidies by recovering more costs from the cost causer"), and at ¶ 77 ("we modify our rate structure requirements to permit incumbent LECs to recover costs in a manner that more accurately reflects the way those costs are incurred").

[12] *See e.g.*, First Report and Order at ¶ 16 ("Coupled with the modifications implemented in our Universal Service Order, the changes we put in place today....will promote the spread of competition by replacing significant implicit subsidies with an explicit and secure universal support system").

[13] Further Notice at ¶ 401-402.

assumes that multi-line business customers of switched services would be less likely to migrate to special access.

As described in greater detail below, the Commission's migration scenario is inconsistent with the Commission's own actions in the *First Report and Order* to reduce per-minute charges for switched access service and phase-down the switched access PICC for multi-line business customers. As a result of these actions, the cross-over point from switched to special access service has *increased*, not *decreased*, so that migration from switched to special access based purely on pricing considerations is *less* likely. Moreover, the migration rationale is inapplicable to many existing customers of special access who must take the service for technical and operational reasons. Finally, the adverse impact of a special access PICC on special access customers outweighs any speculative benefits to the ILECs' revenue stream for switched access service.

A. The Commission's Revisions to Switched Access Elements Will Discourage, not Encourage, Migration to Special Access Service by Multi-line Business Customers of Switched Access Service.

As a threshold matter, the Commission has not identified any factual basis for its assumption that its restructured switched access rate structure for multi-line business customers will stimulate migration to special access services. Indeed, the Commission's migration scenario is fundamentally at odds with the Commission's own claims in the *First Report and Order* that under its new rate structure for switched access: (1) business SLCs will not increase substantially; (2) per-minute charges for switched service will be reduced significantly; and (3)

PICCs for multi-line business customers will be small and will decline over time due to the gradual increase in residential and single-line business SLCs and PICCs.[14] As the Commission itself stated, "[w]e believe that the approach [towards SLC increases] we adopt should prevent widespread discontinuance of lines by multi-line customers....We expect the rate structure modifications we adopt in this order to benefit the majority of multi-line customers through reductions in per-minute long distance rates."[15]

According to the Commission's estimates, the impact of the PICC on the bottom-line price for business multi-lines will be relatively short-lived. Staff has informally advised counsel for the Ad Hoc Committee that the multi-line PICC will drop from the $2.75 per month level its starts at on January 1, 1998, to less than a dollar by January, 2001. These reductions are attributable in large part to the phased-in structure of the PICCs for other access line categories and the allowed increases in the SLCs for second lines and the ISDN BRI lines. The switched multi-line PICC is in effect a residual rate element at the bottom of a long stream of other rate elements designed to recover the new total interstate NTS assignment. Since the FCC's new Part 69.153 rules specifically require a phase-in and increase in the PICCs for all non-primary lines (second line and ISDN BRI) and single line PICCs, and Part 69.152 requires that non-primary line

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[14] *See, e.g.* First Report and Order at ¶ 101 ("[A]s the incumbent price cap LECs increase their PICCs for primary residential and single-line business lines, they shall reduce the amount recovered from the residual per-minute CCL charges and reduce their PICCs on non-primary residential and multi-line business lines by a corresponding amount in accordance with the procedures" set forth in the First Report and Order).

SLCs gradually increase to cost, the multi-line switched PICC necessarily will decline.

As a result of these programmatic decreases in multi-line switched access prices, the Ad Hoc Committee has calculated that the overall effect of the Commission's restructuring of switched access charges is to *increase,* rather than *decrease*, the "cross-over" point between switched and special access services thereby *reducing* any price-driven migration from switched access to special access. The cross-over point is the traffic level at which a user would pay more under the usage-sensitive switched access rate schedule than the user would pay for equivalent capacity under the flat-rated special access rate schedule. For users whose choice of service is governed exclusively by relative price, the cross-over point is the point at which they have an economic incentive to take special access service in lieu of switched access service.

As displayed in the Attachment to this pleading, the current prices for DS0, DS1, and DS3 services would be more economical than switched access prices once a customer reaches approximately 50 hours, 300 hours, and 3200 hours of traffic, respectively. That is, at current prices, an access customer who is indifferent to service characteristics other than price would pay less for special access service, and would therefore have an incentive to substitute special for switched, once its traffic reached the levels identified above.

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[15] First Report and Order at ¶ 80.

According to the Commission's price projections for the new switched access rate structure, the cross-over point will *increase* as the Commission's restructure of switched access charges takes effect. The charts in the Attachment display the higher cross-over points associated with the lower switched access prices projected for tariffs taking effect July 1, 1997 and January 1, 1998. Thus, there will be *less* migration between switched and special access service as the Commission's new rate structure takes effect which further undercuts the Commission's justification for the proposed special access PICC.

Migration is not likely to occur even in the short period of time preceding the effective dates of the Commission's restructure of switched access. Multi-line business customers, cognizant of the Commission's phase-in of rate structures and rate levels that will recover the full average per-line common line revenues from residential and single line business customers, are not likely to expend the considerable resources required to migrate to special access services (*e.g.*, payment of non-recurring installation charges) solely to avoid the short-term costs associated with the Commission's access charge restructuring.[16]

To the extent that the Commission is concerned about uneconomic service migration, the preferable and pro-competitive solution is not to suppress

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[16] Of course, if the Commission's implementation of its phase-in is delayed or aborted, business customers can be expected to eventually reconfigure their services in response to uneconomic cost shifts to their services.

demand for special access service through a new, non-cost based charge but rather to complete the process of restructuring switched access rates so that the rates properly recover the costs associated with switched services.

B. The Commission's Migration Rationale Erroneously Assumes that Special and Switched Access Services are Interchangeable for All Customers.

The Commission's migration rationale for artificially inflating special access prices, *i.e.,* to discourage switched access customers from substituting special access services, erroneously assumes that switched and special access services are routinely interchangeable for many business customers so that relative price is the determining factor for service selection. But special and switched access services, as the Commission has long recognized, are not interchangeable.

The FCC established separate categories in Part 69 for switched and special access because those services use different facilities to serve different customer groups with different needs. As the Commission has previously noted:

> Special access services do not use the local switch; they use dedicated facilities that run directly between the end user and the IXC's point of presence ("POP"). By contrast, switched access services use the local exchange switch to route originating and terminating interstate toll calls. The special access category includes a wide variety of services and facilities, such as wideband data, video and program audio services.[17]

[17] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Dkt. Nos. 96-262, 94-1, 91-213 and 96-263, FCC 97-

The rationale for distinguishing between special and switched access services remains as strong (if not more compelling) today. For example, large users and businesses increasingly rely on special access services to deliver data traffic, which has increased in volume since the adoption of the access rules, in an expeditious and cost-effective manner. The expanded bandwidth available under special access service, and the ability to track and measure service quality parameters on special access installations, make such services a more viable operational and technical option for companies with large amounts of data traffic.

The Commission's report of annual operating statistics for local exchange companies demonstrates the non-fungible nature of switched and special access services. For example, the most recent statistics show that the total number of special access lines sold by all reporting local exchange companies totaled 14,964,943 lines. The vast majority of those lines – 12,990,130 (87 percent), were digital lines. By contrast, of the 140,631,474 switched access lines purchased by business and residential customers, the overwhelming majority – 139,014,105 (99 percent), were analog lines.[18]

The Commission's proposal to impose a PICC on special access lines penalizes special access customers who must use special access for technical

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158, *Notice of Proposed Rulemaking*, *Third Report and Order*, and *Notice of Inquiry* (released December 24, 1996) (footnote omitted) at ¶ 24. Unlike the case of switched access, for special access the Commission does not prescribe specific rate elements in Part 69. *Id.*, see also In the Matter of MTS and WATS Market Structure, CC Dkt. No. 78-72, Phase I, *Third Report and Order*, 93 F.C.C.2d 241 (released February 28,1983) ("Access Charge Order").

[18] Statistics of Communications Common Carriers, Table 2.10, pg. 159, 1994-1995.

and operational reasons. By ignoring the customers for whom price-based migration is irrelevant, the Commission's proposal imposes non-cost-based charges on customers with no other service options and undermines efficient use of telecommunications technologies.

C. The Commission Must Consider the Adverse Impact of its Proposal on Existing Special Access Customers.

The *Further Notice* fails to consider the effect of a special access PICC on existing special access customers. As described above, special access services have unique operational and technological attributes for many business customers. In light of those service characteristics, many business customers have spent significant amounts of money to install special access facilities, and may have entered into term agreements for the provision of private network facilities using special access services.

The imposition of an uneconomic, non-cost based charge on special access service unfairly penalizes existing special access customers. Indeed, customers taking service under term agreements may face significant termination penalties if, as a result of the Commission's artificial increase in special access rates, they attempt to replace their private network arrangements with switched services. The *Further Notice* fails to consider the price and service consequences for these captive, existing special access customers of the Commission's special access PICC proposal.

The Commission's proposal also fails to consider the effect of a special access PICC on current switched access business customers whose service needs change such that, for operational and technical reasons, special access service becomes more suitable. Faced with added costs to migrate, however, those potential customers may refrain from upgrading their networks to take advantage of the potential benefits of special access services.

CONCLUSION

For the reasons set forth above, the Ad Hoc Committee urges the Commission to reject a PICC for special access services. Such an implicit subsidy would be a significant step backwards in the Commission's efforts to recover costs of the common line from the cost-causer, and penalizes users of special access facilities.

Respectfully submitted,

The Ad Hoc Telecommunications
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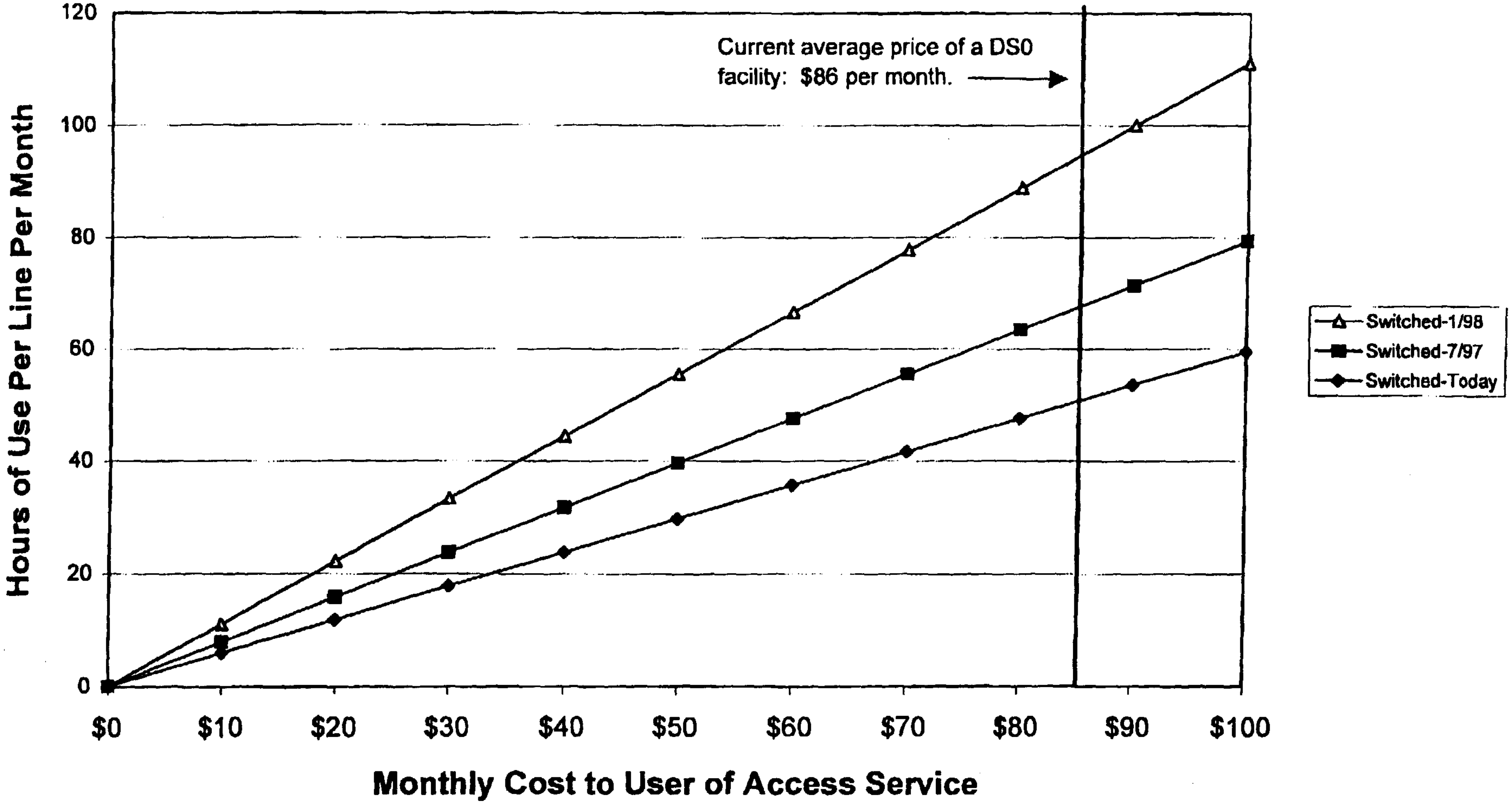
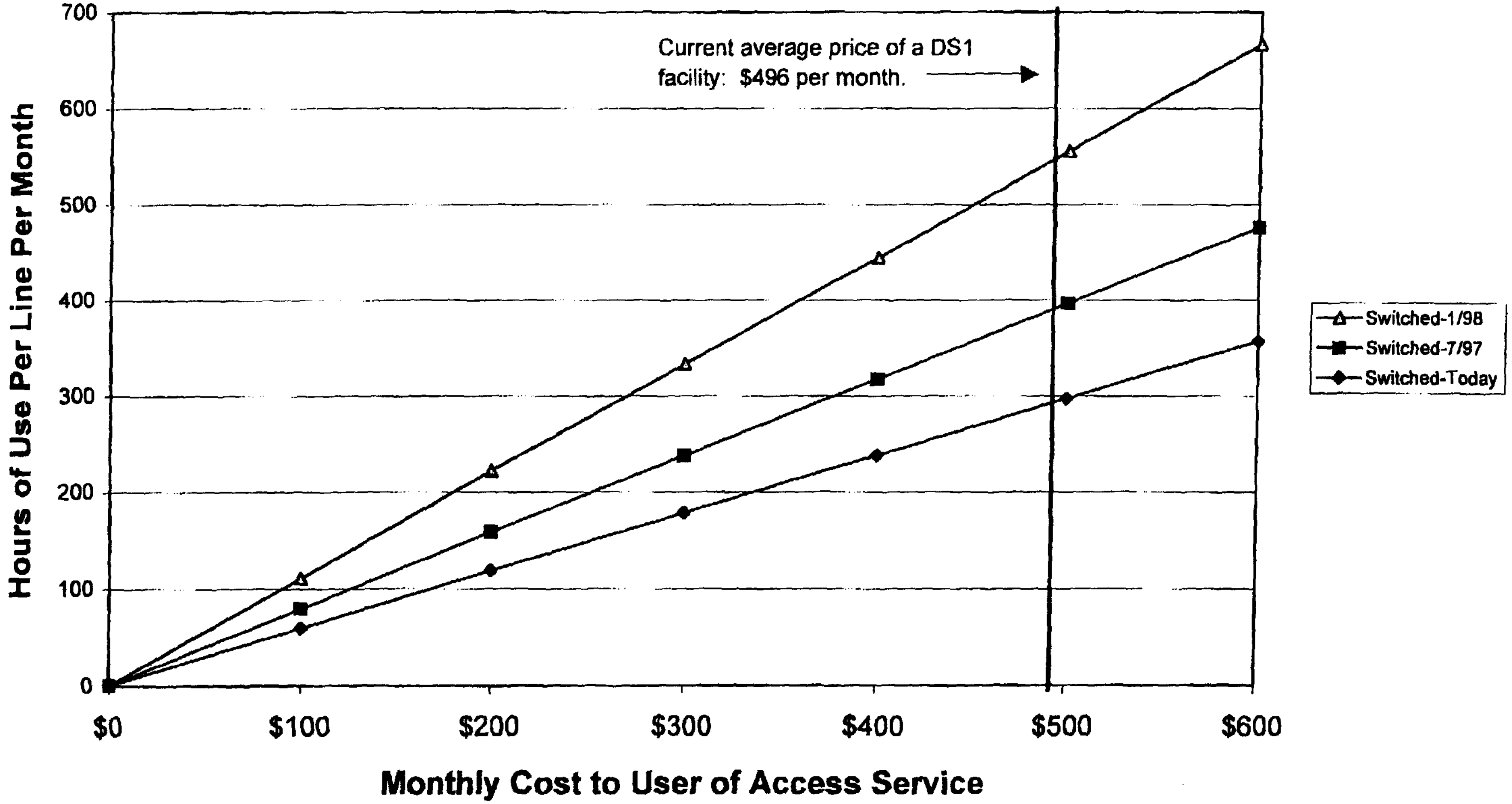
June 26, 1997

200.03/axsre4m/Spec Acc PICCs RM/COM PICC Draft 4

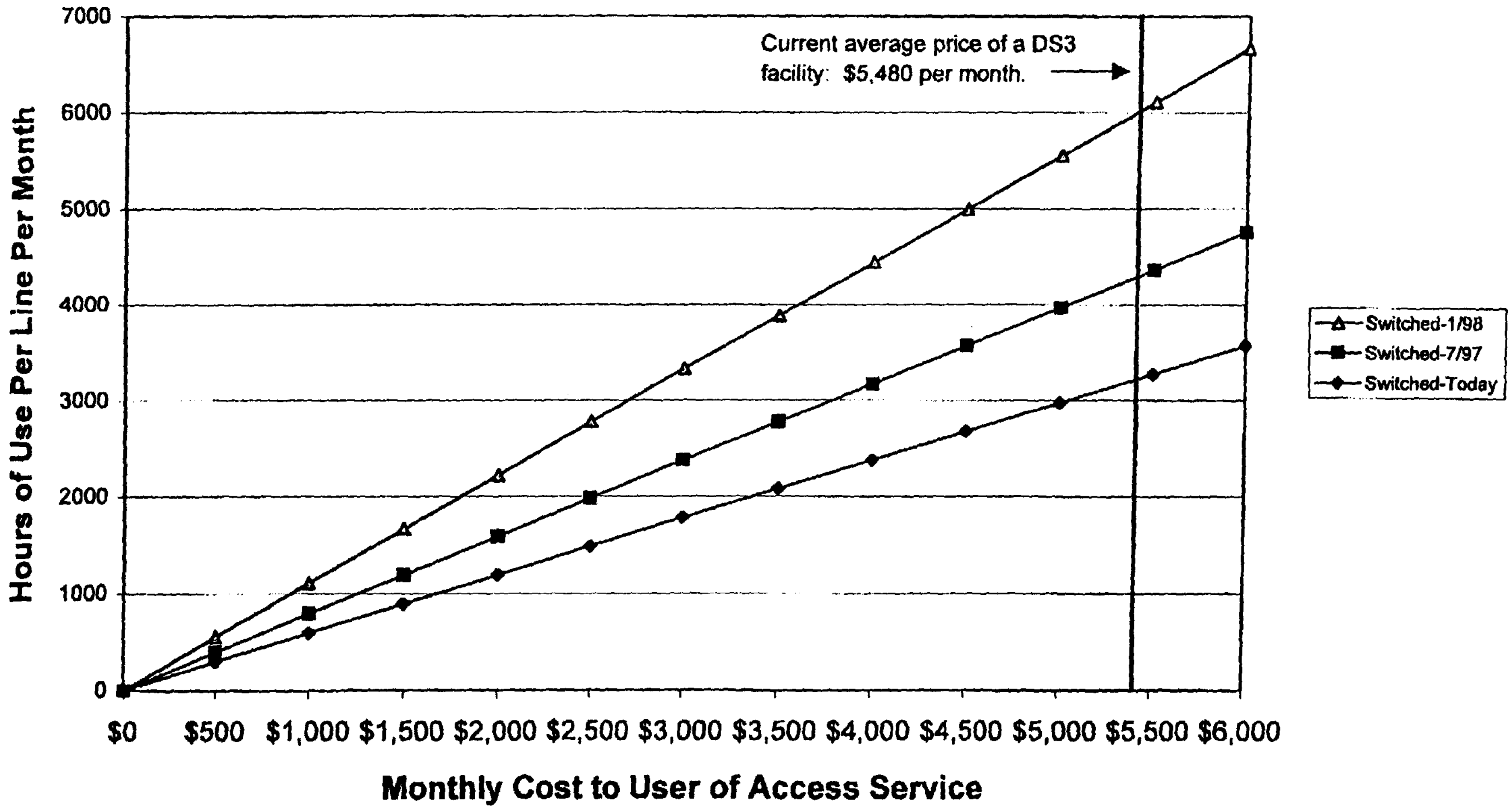
Projected reductions in switched access usage rates will increase the monthly usage levels required for customers to choose DS0 service over switched access.



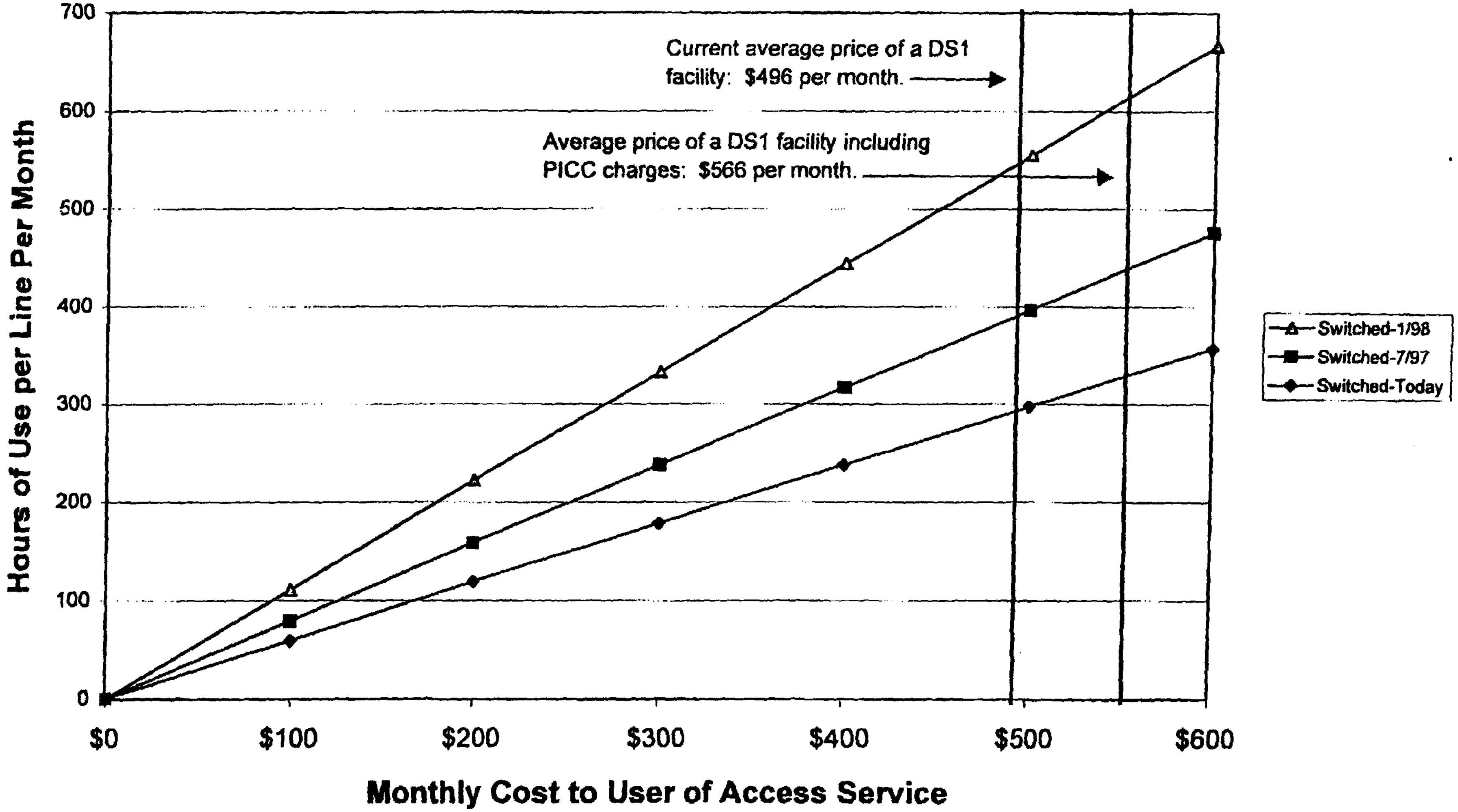
Projected reductions in switched access usage rates will increase the monthly usage levels required for customers to choose DS1 service over switched access.



Projected reductions in switched access usage rates will increase the monthly usage levels required for customers to choose DS3 service over switched access.



The addition of a PICC charge will serve to further shift demand to switched access services, and away from special access.



CERTIFICATE OF SERVICE

I, Kurt A. Kaiser, hereby certify that on this 26th day of June 1997, true and correct copies of the preceding Comments of the Ad Hoc Telecommunications Users Committee pursuant to the Commission's May 16, 1997 Further Notice of Proposed Rulemaking in the First Report and Order regarding CC Docket Nos. 96-262, 94-1, 91-213 and 96-263 were served by hand delivery upon the following parties:

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